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(916) 323-7713

January 13, 1984

Mr. Mark R. Lovington  
Deputy General Counsel  
Department of Housing  
and Community Development  
Legal Affairs Office  
921 Tenth Street  
Sacramento, CA 95814

Dear Mr. Lovington:

Property Tax Assessment of Low Income Housing

This is in response to your recent correspondence to Assistant Chief Counsel Larry Augusta in which you ask our legal opinion. You ask what is the proper method of valuing the privately owned fee interest in real property in use for low income housing.

I understand the following to be the facts. Your agency finances low income housing projects. A private individual owns either the land only or the land and building in fee. The property is dedicated to use as low income housing by a recorded contract agreement between a government housing authority and the private fee owner. Under this set of facts, you ask what is the proper method for valuing this property for property tax purposes, particularly in light of Revenue and Taxation Code Section 402.1.

Revenue and Taxation Code Section 402.1 contains special instructions to the assessor for the valuation and assessment of properties burdened by land use restrictions. We interpret Section 402.1 to apply only to restrictions placed on the property by government. (We note that all of the enumerated restrictions involve government action and therefore we do not apply this section to restrictions placed on property by contracts between private individuals.) Therefore, since the enforceable restrictions involved in your projects evolve from government action which restricts the use of the property through recorded contracts with government agencies, then Section 402.1 would apply to the property to which you refer. In this event, the county assessor is

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mandated to consider the effect any such contractual restriction has upon the value of the property when he values the property for property tax assessment purposes.

I would suggest the assessor value the ownership interest of a private developer owning fee interest in one of your properties by breaking the ownership of the property into two parts. One part would be the lessor's interest and the other part would be the lessee's interest. The value of the lessor's interest added to the value of the lessee's interest would equal the fair market value of the total unrestricted fee-simple interest. We could rationalize that the lessee's interest (the governmental agency) is not intended to be assessed. We then could rationalize that the lessor's interest (the private fee owner) is the only remaining interest to be assessed. Therefore the county assessor would, through good appraisal practice, measure the private fee owner's interest as the value of the lessor's interest to be assessed.

There are several appraisal methods which could be used to measure the fee owner's interest in this instance. One method could go like this: Appraise the total property in fee at fair market value as if it were not restricted by the enforceable restrictions enumerated. Then appraise the property at the value for which it could be sold considering it to be burdened by the enforceable restrictions. If the value of the property is less because it is enforceably restricted, then the measure of that loss of value is the amount by which the fee owner has contracted away his ownership rights to the government. The remaining assessable value is the value in the property to which he has retained to himself as lessor and therefore is subject to property tax assessment to him by the local county assessor.

Very truly yours,

Robert R. Keeling  
Tax Counsel

RRK:fr

bc: Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson  
Mr. Verne Walton  
Legal Section